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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,996	07/11/2003	R. Gary Turnbull	TRG-10002/01	4249

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EXAMINER

HWANG, VICTOR KENNY

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/617,996	TURNBULL ET AL.	
	Examiner	Art Unit	
	Victor K. Hwang	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 16-28 is/are allowed.
6) ☒ Claim(s) 1-15 and 29 is/are rejected.
7) ☒ Claim(s) 2 and 14 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Allowable Subject Matter

1. Claims 16-28 are allowed.

Response to Arguments

2. Applicant's arguments filed August 22, 2005 have been fully considered but they are not persuasive. Applicant argues that the "seats" shown in the cited references are stationary benches for use with traditional fixed station exercise equipment, and that the mere fact that such equipment may be positioned in the cargo area of a semi-truck does not transform that bench into a vehicle seat. This is unpersuasive because the recitation of "a vehicle seat" does not distinguish it from any seat that can be found in a vehicle. The "cargo area" of a semi-truck, wherein passengers can occupy the space can be reasonably considered to be a passenger compartment. There is nothing in the claimed limitations to distinguish the vehicle seat from a seat located in a vehicle or the passenger compartment of a vehicle.

The recitation "a vehicle" is not considered to be limited to a wheeled vehicle. Aircraft, watercraft and spacecraft are also considered vehicles having passenger compartments. These vehicles are all well known to have passenger compartments including a floor and a vehicle seat, and exercise apparatus having frames directly contacting and secured to the floor of the vehicle. Large cruise ships typically include exercise rooms containing exercise equipment. Aircraft, such as Air Force One, include passenger compartments with a floor and vehicle seats, and exercise apparatus secured to the floor of the aircraft.

Claim Objections

3. Claims 2 and 14 are objected to because of the following informalities:
- claim 2 presumably depends from claim 1 so that it does not depend from itself; and
- claim 14 presumably depends from claim 10, since the claim would otherwise be a duplicate of claim 9.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 29 is rejected under 35 U.S.C. 102(b) as being anticipated by *Nathaniel* (US Pat. 5,013,035). *Nathaniel* discloses an exercise apparatus comprising a frame including a pair of base members 22,24, a support leg 12,14 extending from each base member 22,24, and a crossbeam 16 that is connected to and extends between each support leg, 12,14. An exercise device (Figs. 6-8) is positioned on the frame. The frame includes a plurality of apertures (Fig. 5) on the base members 22,24. The apertures allow the frame to be operable to be secured directly to the floor of a passenger compartment of a vehicle. The recitation “the frame being operable to be secured directly to the floor of a passenger compartment of a vehicle” is considered an intended use of the apparatus. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed

apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-5, 8, 10, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Hanc* (Newsday, Fitness File, 11/22/99, pg. 13) in view of *Location Fitness* (website information with a heading date of May 12, 1999) and *Nathaniel* (US Pat. 5,013,035). *Hanc* discloses a vehicle comprising a mobile gym containing a variety of exercise equipment including treadmills, stationary bikes, and multi-station gym equipment. The multi-station gym equipment includes a leg extension/leg curl unit. The vehicle inherently has a floor upon which the exercise equipment is supported. The exercise equipment comprising the stationary bike and the multi-station gym equipment inherently include seats for supporting a user. These seats, being in a vehicle, are reasonably considered to be vehicle seats. Providing mobile gym facilities is well known in the exercise art.

Hanc does not disclose the exercise equipment and vehicle seat secured to the floor of the vehicle (claims 1 and 10); the exercise apparatus including a frame comprising a pair of base members directly contacting the floor, a support leg extending from each base member, and a

crossbeam that is connected to and extends between each support leg (claims 2 and 10); a mounting fixture positioned on a support leg (claims 3 and 12) or a base member (claim 4), the exercise device being removably secured to the mounting fixture; each base member having a bottom surface that is complementary to the shape of the floor of the vehicle (claim 5); and the exercise device includes a grip, an elastic cord and a clip, the grip and clip being secured together by the elastic cord and the clip being removably securable to a mounting fixture (claims 8 and 13).

Location Fitness discloses a mobile gym facility vehicle. The facility can be customized to any fitness equipment requirement or personalized training specification. Any specific equipment can be requested to be included.

Nathaniel discloses an exercise apparatus including a frame comprising a pair of base members 22,24, a support leg 12,14 extending from each base member, and a crossbeam 16 that is connected to and extends between each support leg. Mounting fixtures 36-43 are positioned on the support legs and base member 26. The exercise device includes a grip 57, an elastic cord 50 and a clip 53, the grip and clip being secured together to opposite ends of the elastic cord and the clip being removably securable to one of the mounting fixtures. Each base member has a substantially flat bottom surface and is adapted for support on a horizontal floor surface. Inherently, the apparatus would be secured to the floor since it is designed to be supported on a horizontal floor. Fasteners are not required for an apparatus to be secure. The pair of base members are designed to secure the apparatus by providing a large footprint to minimize tipping. Additionally, the drawing of Fig. 5 shows apertures in the base member 24, which one of ordinary skill in the art would reasonably conclude to receive fasteners to further secure the

apparatus to the floor. The exercise apparatus may be utilized by two individuals to perform simultaneous workouts in a minimum amount of space. The base members, support legs and crossbeam are designed to be disassembled expediently, and therefore, the support legs are considered to be rotatable with respect to its base member and the crossbeam.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the mobile gym facility vehicle disclosed by *Hanc* with the exercise apparatus of *Nathaniel*, since *Location Fitness* discloses providing vehicles with exercise apparatus and that any exercise equipment can be part of a mobile gym facility configuration.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Hanc* (Newsday, Fitness File, 11/22/99, pg. 13) as modified by *Location Fitness* (website information with a heading date of May 12, 1999) and *Nathaniel* (US Pat. 5,013,035) as applied to claim 5 above, and further in view of *Jones* (US Pat. 5,171,198). *Hanc* as modified by *Location Fitness* and *Nathaniel* discloses the invention as claimed except for each base member including a flange and a longitudinal axis, the flange extending from the base member perpendicular to the longitudinal axis of the base member.

Jones discloses an exercise apparatus comprising base members 21,22 having longitudinal axes and flanges 27-30 extending perpendicularly from each base member. The flanges provide support for the base members (col. 4, lines 45-48).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the base members of the exercise apparatus of *Hanc* as modified

by *Location Fitness* and *Nathaniel* with flanges, in order to provide support for the base members, as taught by *Jones*.

9. Claims 7, 11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Hanc* (Newsday, Fitness File, 11/22/99, pg. 13) as modified by *Location Fitness* (website information with a heading date of May 12, 1999) and *Nathaniel* (US Pat. 5,013,035) as applied to claims 2 and 10 above, and further in view of *Bushnell* (US Pat. 4,241,914). *Hanc* as modified by *Location Fitness* and *Nathaniel* discloses the invention as claimed except for the crossbeam including adjustment means such that the dimensions of the frame may be adjusted by a user (claims 11 and 15), the frame including a spring biased pin and plurality of apertures (claim 7). *Nathaniel* discloses that the dimensional relationships for the parts of the exercise apparatus, including variation in size are readily apparent and obvious (col. 5, lines 32-40).

Bushnell discloses an exercise apparatus having a frame comprising a pair of base members 12, a support leg extending from each base member, and crossbeams 11b that are connected to and extend between each support leg. The frame is dimensionally adjustable to vary its size, wherein the crossbeams are adjustable in their lengths.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the frame of *Hanc* as modified by *Location Fitness* and *Nathaniel* with adjustable an adjustable crossbeam, since *Nathaniel* discloses that variation in size of the frame would have been obvious and because *Bushnell* discloses that the crossbeam of an exercise apparatus may readily be made adjustable to vary the dimensions of the frame as needed.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the adjustability of the crossbeam by a spring biased pin and plural apertures since the examiner takes Official Notice of the equivalence of the adjustable sleeve of *Bushnell* and spring biased pin and plural apertures for their use in the exercise art and the selection of any of these known equivalents to provide an adjustable length would be within the level of ordinary skill in the art.

10. Claims 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Hanc* (Newsday, Fitness File, 11/22/99, pg. 13) as modified by *Location Fitness* (website information with a heading date of May 12, 1999) and *Nathaniel* (US Pat. 5,013,035) as applied to claims 1 and 10 above, and further in view of *Shugg* (US Pat. 6,159,133). *Hanc* as modified by *Location Fitness* and *Nathaniel* disclose the invention as claimed except for the exercise device comprising a belt.

Shugg discloses an exercise apparatus wherein the exercise device comprises a belt 54 linking two handles 32. The belt permits additional exercise of the chest area of a user. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the exercise device of *Hanc* as modified by *Location Fitness* and *Nathaniel* with a belt, since *Shugg* discloses that a belt can be used to link two handles to provide added exercise to the forward movement of a user's chest.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

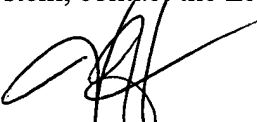
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Victor K. Hwang
November 14, 2005


Stephen K. Cronin
Primary Examiner